

## **Policies and Procedures**

Subject: HIPAA Sanctions

Policy Number: HIPAA 3.4

Effective Date: 12/18/03

Entity Responsible: Division of General Counsel

Revision Date: 1/11/18

### **1. Purpose:**

To provide instructions to the staff of the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) and the Regional Mental Health Institutes (RMHIs) on how to discipline a member of the TDMHSAS and RMHI workforce for failure to comply with Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, or TDMHSAS HIPAA Policies and Procedures.

### **2. Policy:**

All members of the TDMHSAS and RMHI workforce are subject to discipline for failure to comply with TDMHSAS HIPAA Policies and Procedures. Consistent with state law, preferred employees who fail to comply with policies and procedures may be disciplined in accordance with the Rules of the Tennessee Department of Personnel, Chapter 1120-10 Disciplinary Action. Executive Service employees, contractors, volunteers, and trainees serve at pleasure of appointing authority and may be disciplined in accordance with terms of their contract and state law.

### **3. Procedures/ Responsibilities:**

- 3.1: The supervisor of any TDMHSAS or RMHI workforce member found to have violated HIPAA or TDMHSAS HIPAA Policies and Procedures is responsible for recommending the appropriate level of discipline in accordance with TDMHSAS' personnel rules, policies, procedures, and guidelines.
- 3.2: All members of the TDMHSAS and RMHIs workforce must be trained on HIPAA, and TDMHSAS HIPAA Policies and Procedures. Members who violate the above mentioned laws, policies, and procedures after receiving such training

may be warned (written or verbal), suspended, transferred, demoted, or terminated, depending on the nature or severity of the violation.

- 3.3: All members of the TDMHSAS workforce must also be trained on Tennessee's confidentiality laws related to information identifying a service recipient or former service recipient receiving mental health services. All workforce members must be taught that any disclosure of this confidential information in violation of T.C.A. §§33-3-103 through 33-3-115 is a Class C misdemeanor.
- 3.4: Any member of the workforce may not be disciplined by the TDMHSAS or the RMHI for disclosure of PHI, consistent with the minimum necessary standard, if the workforce member believes in good faith that the TDMHSAS or the RMHIs have engaged in conduct that is unlawful or otherwise violates professional or clinical standards; or that conditions provided by the TDMHSAS or the RMHIs endangers one or more patients, workers, or the public; and:
  - 3.3.3: the disclosure is made to a health oversight agency or relevant public health authority authorized by law to investigate or oversee the relevant conduct or conditions of the TDMHSAS or the RMHIs to an appropriate health care accreditation organization; or
  - 3.3.4: to an attorney retained on behalf of a workforce member for purpose of determining legal options of workforce member with regard to the above conduct.
- 3.5: Any member of the workforce may not be disciplined by the TDMHSAS or the RMHI for a disclosure of PHI in filing a complaint to the Secretary of the Department of Health and Human Services, or for participating in an investigation, compliance review, proceeding, or hearing related to the compliance of HIPAA standards. Additionally, TDMHSAS or the RMHIs will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against a member of the workforce for any of the above actions.
- 3.6: A member of the workforce may not be disciplined by the TDMHSAS or the RMHI for opposing any act or practice made unlawful provided the individual or person has a good faith believe that the practice opposed is unlawful and the manner of opposition is reasonable and does not involve a disclosure of PHI in violation of HIPPA. Additionally, TDMHSAS or the RMHIs will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against a member of the workforce for any of the actions described above.
- 3.7: Incidents of any policy or procedure violations and discipline taken against anyone in the TDMHSAS workforce must be reported to the TDMHSAS Privacy Officer. Incidents of any policy or procedure violations and discipline taken against the RMHI workforce must be reported to the RMHI Privacy Officer.

- 3.8: Violations of TDMHSAS HIPAA policies and procedures and resulting discipline actions must be documented and maintained by either the TDMHSAS Privacy Officer or the RMHI Privacy Officer Privacy Officer in a written or electronic log system for at least six (6) years from the date of any violation by the workforce member.

**4. Other Considerations:**

4.1: Authority

45 C.F.R §§ 160.316; 164.308; 164.530(e)(1), (g), (j)(1), §164.502(j); T.C.A. § 33-3-103.

Approved:

Marie Williams vz  
Commissioner

1-11-18  
Date